IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE

WRIT PETITION NO.4239 OF 2005

Mrinal Ashish Bakane,
residing at B-7/504, Vedant Complex,
Opp.Kores India Limited, Pokharan Road
No.1, Vartaknagar, Thane(W). ...Petitioner.

Vs.

-1. The Principal, Dyanasadhana College,
Municipal School No.18, Behind
TELCO, Off Highway, Thane-400 604.

-2. University of Mumbai,
through its Registrar, D. N. Road,
Fort, Mumbai-400 001.

-3. Joint Director of Higher Education,
Mumbai Region, Mahapalika Marg,
Dhobi Talao, Mumbai-400 001.

-4. State of Maharashtra,
Through its Department of Higher &
Technical Education, Mantralaya
Annexe, Mumbai-400 032. ... Respondents.

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Mr. Mihir Desai for the Petitioner.
Mr. R. S. Apte with Mr. M.S. Lagu for Respondent No.1.
Mr. R.A. Rodrigues for Respondent No.2.
Mr. V.S. Gokhale, AGP for Respondent Nos.3 and 4.

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CORAM : F.I REBELLO AND
DR.D.Y.CHANDRACHUD, JJ.

September 21, 2005.

ORAL JUDGMENT (PER F. I. REBELLO, J.):

Rule. Heard forthwith.

2. On 6th September 2005 two weeks' time was granted to enable the Government to file affidavit and to set out whatever they want to say. The Learned AGP appearing for the Respondent-State sets out that they are only relying on the judgment of the Learned Bench of this Court dated 4th July 2003 in Writ Petition 1766 of 2003.

3. The Petitioner was appointed as a full time lecturer in Physics from 23rd July 1990. According to the Petitioner, she is fully qualified to hold the post, having qualifications of M.Sc. (First Class). The Petitioner is holding the said post as a lecturer in Physics since then. It is the case of the Petitioner that the post has been advertised as reserved for six years. This has not been disputed by the Respondent-College. The Petitioner points out that the Petitioner's appointment has been regularly approved by the University of Mumbai. It is pointed out that under various Government Resolutions and circulars issued by the University of Mumbai, a post advertised on more than five occasions and meant for reserved category, is required to be dereserved and an open

category candidate has to be appointed to the said post. The post occupied by the Petitioner became ripe for dereservation in 1994. The College submitted a proposal for dereservation on 21st March 1995. On 27th May 1996, the University of Mumbai required the College to comply with some formalities. Those formalities were completed and the proposal was forwarded to the University. It is the Petitioner's contention that the University B.C. Cell cleared the post for dereservation and recommendations were forwarded by the University to the Joint Director of Education. On 7th April 1998, the Backward Class Cell of the University addressed a letter to the Principal stating that the proposal for dereservation had already been sent to the Government for its approval. As the State Government did not take any decision, the Petitioner filed Writ Petition before this Court being Writ Petition No.2339 of 2002. By an order dated 28th April 2003, the Respondents were directed to decide the Petitioner's claim for dereservation within a period of two months. On 10th June 2004, it is averred that the State Government directed that three posts should not be dereserved since it was now decided not to dereserve the posts. On 27th April 2005, a letter was addressed by the Joint Director to the Principal communicating this decision. The decision had been

communicated to all the colleagues of the Petitioner and it is the case of the Petitioner that she would also be receiving a similar letter. The Petitioner, therefore, filed the present petition for the reliefs as set out in prayer clauses (a) and (b).

4. On behalf of the University, Dinesh Kamble, Deputy Registrar, has filed an affidavit in which it is pointed out that the Petitioner is working as a lecturer in Physics since 23rd July 1990 against the reserved post. The Respondent-College has submitted a proposal for dereservation as per Government Resolutions of 1987 and 1990 to the Respondent-University. In the affidavit, a reference is made to the letter dated 10th June 2004. In the said letter, the Government intimated to the Deputy Secretary (B.C. Cell) that according to the Resolution dated 18th October 1997, the post once reserved remains reserved for ever. We have perused the Government Resolution dated 18th October 1997 and we do not find therein any such proposition that the post once reserved remains reserved for ever. It is based on this, that the University intimated to the College that the post could not be dereserved.

5. No reply has been filed on behalf of the State

Government. We may now address ourselves to the ratio of the judgment in Writ Petition 1766 of 2003 in the case of Mrs.Rajani R. Moti. The Court noted that pursuant to the advertisement, four applications were received from the candidates belonging to the reserved category and out of which one candidate had been selected. The Court noted that the on sixth occasion the post ought to have been advertised under the interchangeability clause. However, the post was erroneously advertised again for scheduled caste category. It is in these circumstances, considering that the candidate was available that the relief sought by the Petitioner in that case was rejected and the petition was dismissed.

6. Teachers similarly situated had filed petitions before this Court, one such being in the case of **Mr.Chandana M. Rege vs. The Principal, Ramnarain Ruia College of Arts and Science** being Writ Petition No.2676 of 2004 which was disposed of on 11th April 2005. The judgment notes that the Resolution of 5th December 1994 of the Government had been adopted by the University vide circular dated 17th July 1996, but has, however, modified certain conditions vide paragraph 6. By that circular, the University set out that on the post being dereserved, if the open

category candidate was working in the post and had been duly selected, then the candidate working in the post was to be absorbed. While disposing of that petition, we referred to the case of Mrs. Aditi A. Abhyankar in Writ Petition No.2675 of 2004. Mrs.Abhyankar was employed since 14th September 1989. The Government in that case granted permission to the University which ultimately approved the regularisation without advertising. The Court noted that the fact that the Government has granted relaxation in the case of Mrs.Abhyankar means that the condition for advertisement is not mandatory and can be relaxed. It is in these circumstances, that Writ Petition No.2676 of 2004 was allowed. That judgment was again followed in Writ Petition No.2141 of 1998 in the case of **Supriya Habbu Vs. K.V. Pendharkar College of Arts, Science & Commerce and others**, disposed of on 2nd May 2005. This Court further noted in the case of Supriya Habbu, the judgment in **Ashok Chandrashekar Rao Vs. University of Mumbai & Ors** in Writ Petition No.3101 of 2004 that in the event there has been a substantial compliance, ordinarily the Government ought to dereserve the post in terms of the resolution, as long as there are no malafides and that the attempt was not to protect candidates from the open categories. Consequential

directions were issued to confirm the Petitioner therein with consequential benefits.

7. In the instant case, as pointed out earlier, the Petitioner was appointed on the regular basis from 23rd July 1990 by a duly constituted Selection Committee. The University also has not contested that the post has been advertised as required for six years. The very fact that the University forwarded the proposal to the Government would mean that they had complied with the Government directions. Even if the case of the Government as set out in a letter dated 10th June 2004 is considered, this would be much before 18th October 1997 and consequently, the case of the Petitioner has to be considered based on the Government Resolution then in existence. If the case of the Petitioner had been so considered, the Respondent-State had to grant permission to dereserve the post and considering the policy of the University to regularise and/or absorb the candidate who had been regularly appointed, the Petitioner ought to have been regularised.

8. In the light of that, the Petition is made absolute in terms of prayer clause (a)(i), (ii) and (iii) as also prayer clause (b).

(F.I. Rebello, J.)

(Dr. D.Y. Chandrachud, J.)